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Supreme Court of the United States

OCTOBER TERM, 1954

No. 164

PHILIP ANDREW WITMER,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No.

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v.

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Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, affirming the judgment of the United States District Court for the Middle District of Pennsylvania convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported.

It appears in the record. [61-62][1] A memorandum opinion of the district court also appears in the record. [52-59] It is reported in 115 F. Supp. 19. The opinion by the Court of Appeals in the companion case of *United States* v. *Hagaman*, referred to in the opinion in this case by the Court of Appeals is an appendix to this petition, page 37.

JURISDICTION

The judgment of the Court of Appeals was entered on May 13, 1954. [62] The time for filing this petition for writ of certiorari has been extended to June 30, 1954. This petition for writ of certiorari is filed within the extended time. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).—See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

I.

Section 6(j) of the act and Section 1626.25 of the Selective Service Regulations provide for the reference of the conscientious objector claim to the Department of Justice for appropriate inquiry and hearing. This is followed by a recommendation by the department to the appeal board on the conscientious objector claim. Petitioner had a hearing, after inquiry, that was followed by a report of the hearing officer to the Department of Justice and a recommendation by the Assistant Attorney General to the appeal board. The hearing officer of the department found petitioner to be a sincere and bona fide member of Jehovah's Witnesses, but the Assistant Attorney General recommended against the conscientious objector status. The draft board file of petitioner showed that while he was conscientiously opposed to direct participation in the armed forces he was willing to work and did work on a farm.

[1] Numbers appearing herein within brackets refer to pages of the printed record in this case.

While the Department of Justice hearing officer did not place any weight on his willingness to help in the defense of the country by farming the Assistant Attorney General in his recommendation to the appeal board did consider this as a basis for the denial of the conscientious objector status. The Court of Appeals denied the classification also for this reason stated by the Assistant Attorney General in his memorandum. The Court of Appeals held that because petitioner was willing to contribute to the war effort by working on a farm he was not a conscientious objector.

A question presented, therefore, is whether the act and the regulations permit the Department of Justice to recommend to the appeal board to deny, and may the appeal board deny, the conscientious objector status because the petitioner, an objector to direct participation in the armed forces, is willing to work on a farm and produce food that might be held to be indirect participation in the war effort.

II.

The undisputed evidence showed that petitioner had conscientious objections to participation in both combatant and noncombatant military service. He showed that these objections were based on his sincere belief in the Supreme Being. The file established without dispute that his obligations were superior to those owed to the state or which arose from any human relation. There was no showing that these beliefs flowed from any political, philosophical or sociological views. The undisputed evidence showed that the objections were based solidly on the Word of God and the obligations that Witmer had to the Supreme Being.

The question here presented, therefore, is whether the the denial of the claim for classification of petitioner by the appeal board as a conscientious objector was without basis in fact and, consequently, the final I-A classification was arbitrary and capricious.

III.

Section 1624.2(b) of the Selective Regulations provides for an oral hearing upon personal appearance by the registrant. Section 1624.2(c) requires that the case be reopened and that the registrant be reclassified. Witmer exercised his right under the regulation by requesting a personal appearance. At the hearing he was told that his case was out of the hands of the board because he had taken an appeal. Witmer had simultaneously requested a hearing and taken an appeal which was proper under the regulations. The board did not reopen and reconsider the classification, but told the registrant to take his appeal at the hearing.

The Court of Appeals held that because the local board told him it was not going to reopen and reclassify, thus giving him notice of the illegal action and deprivation of due process of law and he followed their directions and appealed such cured the deprivation of a right to a full and fair hearing.

The question, therefore, presented to this Court is whether a local board can deny a full and fair hearing upon personal appearance by not considering the case through refusal to reopen and reclassify petitioner and then cure that deprivation of due process of law by merely giving notice of such illegal action.

STATUTE AND REGULATIONS INVOLVED

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. (Supp. V) § 451(c)) provides:

> "The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948,

ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a) 65 Stat. 75.

Section 6(j) of the act (50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86) provides:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant

training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice

> together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the act (50 U. S. C. App. (Supp. V) § 462(a)) provides:

> ". . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

Section 1622.14 of the Selective Service Regulations (32 C. F. R. § 1622.14 (1951 Rev.)) provides:

> *"Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.* (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces."

Section 1624.1(a) of the Selective Service Regulations provides:

"*Opportunity to Appear in Person.*—(a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (SSS Form No. 110) to him. Such 10-day period may not be extended, except when the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control."—32 C. F. R. § 1624.1(a), page 801.

Section 1624.2 of the Selective Service Regulations provides:

"*Appearance Before Local Board.*—(a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. The fact that he does appear shall be entered in the 'Minutes of Actions of Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100).

"(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and,

in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary.

"(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified.

"(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on Notice of Classification (SSS Form No. 110) to the registrant and on Classification Advice (SSS Form No. 111) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 1623.4 of this chapter.

"(e) Each such classification shall be followed by the same right of appeal as in the case of an original classification."—32 C. F. R. § 1624.2, page 802.

Section 1624.3 of the Selective Service Regulations provides:

"*Induction Postponed.*—A registrant shall not be inducted during the period afforded him to appear in person before a member or members of the local board, and if the registrant requests a personal appearance he shall not be inducted until 10 days after the Notice of Classification (SSS Form No. 110) is mailed to him by the local board,

as provided in paragraph (d) of section 1624.2." —32 C. F. R. § 1624.3, page 802.

Section 1626.25 of the Selective Service Regulations (32 C. F. R. § 1626.25 (1951 Rev.)) provides:

> *"Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:
>
> "(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that class.
>
> "(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory

recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the "Minutes of Action by Local Board and Appeal Board" on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious ob-

jections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice."

Section 1626.26 of the Selective Service Regulations (32 C. F. R. § 1626.26 (1951 Rev.)) provides:

"*Decision of Appeal Board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that

an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, that this shall not be construed as prohibiting a lacal board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

STATEMENT

The Facts

Petitioner was born February 7, 1930. [16a] He registered with Local Board No. 28, Reading, Pennsylvania. [16a-17a] On January 23, 1951, the local board mailed him a classification questionnaire, being Form 100. [16a] This was returned to the local board properly filled out on January 31, 1951. [16a] In the questionnaire petitioner indicated, on page 7, that he had conscientious objections to combatant and noncombatant military service. He signed the statement requesting that the special form for conscientious objector be mailed to him. [20a]

In the classification questionnaire petitioner showed that he worked at a hat factory. [20a] He also showed that he operated his father's farm of 116 acres, 30 acres of which were under cultivation. [19a] He showed that he had completed eight years of elementary schooling. [20a]

The local board mailed to the petitioner a special form for conscientious objector (SSS Form No. 150) on January 31, 1951. [21a, 23a] It was returned properly signed and filled out by the petitioner on February 5, 1951. [23a] Al-

though Series I(B) of the form (page 1) was not signed petitioner wrote on page 4 of the form as follows:

> "My training and belief in relation to a Supreme Being involves duties superior to those arising from any human relation. This prevents me from turning aside from those superior duties which I owe to a Superior Being.
>
> [signed] Philip A. Witmer
>
> "for section I (B)
> "page 1" [27a]

Under Series II of the special form for conscientious objector petitioner stated that he believed in a Supreme Being. He described the nature of his beliefs involving duties superior to those arising from any human relation by the following:

> "I am absolutely neutral toward the political disputes and the international controversies and combats of this world. I take no active or violent part for either side, but pay my vows to God and always advocate his kingdom and way of salvation." [24a]

Petitioner showed the source of his training and belief supporting his claim by stating that he had been instructed by his parents in the study of the Bible and that at the age of eleven he himself began to study the Bible with the aid of the Watchtower publications. [24a] He stated in the form that he believed in the use of force only at the command of Almighty God. [24a] He further stated that he had demonstrated his convictions by the study of the Bible and by telling others about God's Kingdom and "of how he will put a stop to all wars." [24a] He answered questions showing his general background, including schooling and employment. [24a-25a] He showed that he was an active member of Jehovah's Witnesses and acknowledged the Watchtower Bible

and Tract Society, Inc., of Brooklyn, New York, as the governing body of Jehovah's Witnesses. He stated that he had always been one of Jehovah's Witnesses. He gave references to the local meeting place and named the presiding minister, Richard Palms. Also he attached to the special form for conscientious objector the February 1, 1951, issue of the *Watchtower* magazine for a description of the official statement of Jehovah's Witnesses in relation to participation in war. He referred to this publication in his answers to Series IV 2(e). [25a-26a]

Petitioner also gave references and signed a certificate that he had truthfully answered all of the questions propounded in the form. [26a-27a]

Petitioner was classified 1-A (making him liable for unlimited military training and service) on February 21, 1951. [21a] On March 1, 1951, petitioner wrote a letter requesting a personal appearance, in which he also requested an appeal. [12a-13a, 27a-28a] The local board notified petitioner to appear before the board for a personal appearance on March 19, 1951. [27a]

At the trial in the court below a question was raised as to whether the request for personal appearance was within ten days as required by the regulations. The letter requesting personal appearance and appeal was written on March 1, 1951, mailed on that date but not received by the board until March 5, 1951, which was more than ten days from the date of classification. The reason for the delay in receiving the letter was due to the fact that the office of the board was not open on Saturday, March 3, and was closed on Sunday, the 4th as usual. The clerk found the letter at the office on arrival on the 5th. [11a-12a] Neither the court nor the local board held that the petitioner was too late in making the request. [11a, 53a]

Petitioner appeared on March 19, 1951. [4a, 5a, 9a-10a, 21a, 33a-34a, 53a-55a] He submitted new information verbally and also filed with the board a letter and an affidavit. [9a, 28a-29a, 29a-33a, 54a] The affidavit is by Richard B.

Palms, the presiding minister of the local congregation of Jehovah's Witnesses. It vouches for the sincerity of the petitioner and his membership in the organization known as Jehovah's Witnesses. [9a, 28a-29a, 53a] A typewritten statement attached to the affidavit, consisting of three pages, explained why petitioner felt that he was a minister of religion and entitled to classification as such. [9a, 29a-33a, 53a-54a] The local board made a memorandum of what transpired upon the occasion of the personal appearance. It was dictated by the chairman of the board. [7a, 10a, 33a-34a, 54a-55a] It reads as follows:

"March 19, 1951

"Re: Order #36-28-30-71 Philip Andrew Witmer

"The Board met with registrant today. The registrant informed the Board that he left his place of employment on March 3, where he had worked for three years in a hat factory. The Board chairman immediately pointed out that he was classified as 1-A on February 21, which meant he left his position about two weeks later. He then mentioned that his father had a farm which had not been worked as a farm for 23 years but that he felt he was going to start getting this farm in shape. Prior to this time he stated he had gotten a few acres in shape for their own family use so that they would not be dependent upon other people.

"The registrant then pointed out that he was a minister of the Gospel and the only evidence he presented to substantiate this fact was some paraphernalia from the Watchtower Association of the Jehovah Witness. The registrant was asked if he was an ordained minister and he said Jehovah Witnesses became ordained when they started distributing their literature. The Board felt this was not sufficient evidence to warrant a

4-D Classification and informed the registrant his case would be sent up to the Appeal Board following his physical examination." [33a-34a, 54a-55a]

There was considerable interrogation by counsel and the court as to what transpired upon the occasion of the personal appearance. The undisputed evidence developed at the trial establishes that petitioner was told that because he had requested an appeal no action would be taken upon his case, the classification would not be changed, no new classification card would be mailed and that the file would be forwarded to the appeal board. The board admittedly informed petitioner at the conclusion of the personal appearance that the case was out of their hands because he had appealed. [4a, 5a, 6a-7a, 8a, 10a, 13a]

The clerk of the local board testified that it was the policy of the board, when no new evidence was presented justifying a change of classification, not to notify the registrant by mailing a notice of classification and not to consider the classification anew, but automatically to send the file to the appeal board without further action. [4a, a-7a, 10a]

Following the personal appearance the file was sent to the appeal board. On April 24, 1951, the appeal board determined that petitioner should not be classified as a conscientious objector, either to combatant or noncombatant military service. In the same order the appeal board, as required by statute, ordered the entire file forwarded to the Department of Justice for an investigation and report to the appeal board on the validity of petitioner's claim for classification as a conscientious objector. This action is not referred to in the testimony. It appears in the draft board file. [21a, 34a-35a, 55a]

The report of the Federal Bureau of Investigation was that the grade school teacher informed that petitioner had a high character and thought that he was "a sincere objector." [37a] Members of petitioner's church reported that

he was active in the work of Jehovah's Witnesses and believed "him to be sincere." [37a] The employer of petitioner reported that petitioner was "very religious and very sincere in his beliefs." [37a] A fellow employee remembered him as being a very aggressive talker on religion and that he had heard him say "long ago that it is wrong to go to war." [37a] Petitioner's neighbors reported that the character of petitioner was good and that they thought his conscientious objector stand was made sincerely. [37a]

The facts stated by the hearing officer were that petitioner was one of Jehovah's Witnesses and that he signed Series XIV in the classification questionnaire showing that he was conscientiously opposed to participation in war, combatant and noncombatant. He refers to Form 150 submitted by petitioner where he took the position all of Jehovah's Witnesses take, that they were neutral in their attitude toward war by the worldly governments and their obligations to God were superior to any other obligation. [37a-38a] The hearing officer stated:

> "This position is a form of pacifism peculiar to this group. They say that they would fight at the Lord's command, but that there is now no such command to them. They say that the ancient Jews were justified in making war because Jehovah commanded them to. They claim to be ministers of the gospel and object to army service because it will interfere with their ministry. They usually refer also to the Christian obligation to love others and not to hate or harm them. The registrant says on this point: 'We believe in love and you are supposed to love everybody even your enemies'. This registrant's pacifism is based on all these considerations. His position is the same as that of many members of this group whom I heard during the war and who were classified 4E.
>
> "As to taking noncombatant service, he quotes

his old school teacher who used to say, the boy who makes the snow balls is just as responsible as the boy who throws them. . . .

"The registrant is evidently a life-long and rather active Jehovah's Witness. His desire to be deferred on other grounds does not seem to me to invalidate his claim to be regarded as a conscientious objector."

The hearing officer recommended in favor of petitioner's claim for classification as a conscientious objector, reporting:

"I recommend that the registrant be classified IV-E." [39a]

A. Devitt Vanech, Deputy Attorney General, on October 18, 1951, reviewed the file and the report of the hearing officer. [35a-36a] He rejected the recommendation of the hearing officer and recommended that petitioner's claim for exemption as a conscientious objector be not sustained:

"After consideration of the character and good faith of the objections of the registrant, the Department of Justice recommends to your Board that his claim for exemption from combatant and noncombatant training and service be not sustained.

"You will note that this Department does not concur in the recommendation of the Hearing Officer. January 30, 1951, while employed in a hat factory, registrant wrote a letter to the local board, in which he states: 'It is my ambition to become a farmer and devote all my time to farming. For this reason I am appealing to you to grant me an agricultural classification as I assure you that I will increase production year after year, and contribute a satisfactory amount for the war effort and civilian use.' In his letter to the

> local board dated March 1, 1951. registrant claims to be a minister of the Gospel. Registrant's inconsistent statements and his offer to contribute to the war effort are believed to be incompatible with a sincere conscientious objector claim." [36a]

The Deputy Attorney General added:

> "It is also noted that registrant did not sign series I (A) or (B) on SSS Form No. 150." [36a]

It should be observed that this comment by the Deputy Attorney General is without weight or moment in the consideration of the claim of petitioner as a conscientious objector because, as stated at page 14, *supra,* although petitioner did not sign the printed statement on page 1 of the special form for conscientious objector (SSS Form No. 150), he wrote out and signed a statement on page 4 of the special form which is identical to that appearing in the printed statement in series I (B). [27a]

On November 6, 1951, petitioner was notified of a I-A classification by the appeal board. [21a] This is shown by the appeal record that appears in the draft board file. [39a]

Petitioner was mailed a notice to report for induction. [21a, 44a] It was dated November 21, 1951. He was commanded to report and submit to induction on December 5, 1951. [44a]

Petitioner reported at the induction station but refused to submit to induction. [48a] He was taken out of the line-up and admonished if he did not submit to induction he would be prosecuted. He was offered noncombatant service in the armed forces as a conscientious objector, which he refused. He was again ordered to take one step forward when his name was called and he again refused to step forward and be inducted into the armed forces. [49a-50a] The army officers reported from the induction station back to the local board that petitioner was a conscientious objector, that he was one of Jehovah's Witnesses, and that because

of conscience and religion he could not enter military service "even in a noncombatant status." [48a, 49a-50a]

History of Action

This criminal action was started by indictment charging petitioner with violating the Selective Service Act of 1948, as amended, and the regulations thereunder, by failing to submit to induction. [1a, 3a] The indictment charged that the petitioner refused to be inducted into the armed forces of the United States after having been properly classified and ordered to report for induction by his local board. [1a, 3a] Petitioner was arraigned. He pleaded not guilty. [1a] There was a trial to the jury. [1a, 4a] The case was called for trial on Thursday, March 27, 1952, and was concluded on Monday, March 31, 1952. [1a, 4a, 15a] Evidence was received. [4a-16a]

The jury found the petitioner guilty. [1a] The court heard argument on the motion for acquittal and took the case under advisement. [1a] An opinion was written and an order entered denying the motion. [1a, 52a-59a] The court sentenced petitioner to serve three years in the custody of the Attorney General. [16a] Notice of appeal was duly and timely filed. [2a] The court below affirmed. [61-62] The petition for writ of certiorari is timely filed.

Rulings of the Court Raising Questions Involved

At the close of the Government's case in the district court the petitioner made a motion for judgment of acquittal and requested the court to instruct the jury to return a verdict. [7a-8a] This motion was renewed and additional grounds were urged after the verdict. [14a, 50a-52a] The court overruled both motions. [14a, 50a] An opinion was written. [52a-59a] Each question raised in this petition is supported by the motion for judgment of acquittal and was passed upon by the courts below. [50a-52a, 52a-59a, 61-62]

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred in holding that—

(1) The appeal board had basis in fact for the denial of the conscientious objector status;

(2) The recommendation of the Department of Justice that petitioner's willingness to aid the war effort by farming was basis in fact for the denial of the exemption from participation in the armed forces as a conscientious objector;

(3) Failure to give the petitioner a full and fair hearing on personal appearance by not reopening and reclassifying petitioner was not a denial of procedural due process of law;

(4) The judgment of the trial court should not be reversed but affirmed.

REASONS FOR GRANTING THE WRIT

I.

The first ground for granting certiorari is that here is presented a very important question of federal law which has not been, but which ought to be, determined by this Court. It is whether willingness on the part of the thousands of conscientious objectors to participate indirectly in the war effort by doing work on a farm forfeits their exemption from direct participation in the armed forces.

The courts below held that they could lose their conscientious objector status if they worked or were willing to work in a defense plant. [55a, 61] The petitioner says that, in the absence of an express authorization from Congress, the holding below was in error. The holding was judicial legislation rather than statutory construction.

The question is, therefore, very important because it involves the proper administration of the law by thousands of administrative officers affecting the rights of thousands of registrants throughout the entire United States. The case does not involve one person or one group of persons. But

the rights of all conscientious objectors in the United States to do work of their own choice and keep their exempt status is involved under the act and the regulations. The nation-wide effect and the large class of persons affected by the ruling make the question extraordinarily important so as to command a review and determination by this Court.

The hearing officer of the Department of Justice did not place great reliance on the fact that Witmer was employed on the farm. But the Assistant Attorney General in his recommendation to the appeal board gave consideration to this fact. Witmer said that his conscience was clear. Notwithstanding the type of work that he did, he was still conscientiously opposed to participation in war in the armed forces in any form.

Petitioner submits that the local board and the trial court have misinterpreted Section 6(j) of the act. The court below erroneously approved this. Congress never provided that the conscientious objections must be to "war in any form." (*Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329 certiorari denied March 15, 1954, 347 U. S. 928) Congress did not hold that a conscientious objector who was not opposed to self-defense and employment in defense work was not a conscientious objector. It is direct participation in war in any form that is the subject matter of the statutory provision for the conscientious objector. Nothing whatever is said in the act or the regulations or in the legislative history that indicates anything to the effect that if a person is willing to do a certain type of work and indirectly participates in the war effort he cannot be considered a conscientious objector having conscientious scruples to direct participation in war in any form even though he was willing to indirectly participate by performing farm work as a means of employment. If the unreasonable interpretation placed upon the act by the trial court and the local board, which was adopted by the Court of Appeals, is accepted it will authorize an unending and uncontrollable forfeiture of bona fide conscientious objector claims. Every

type of work and act that may be conceivably thought of remotely and indirectly contributing to the war effort can be relied upon to deny the conscientious objector status. This is contrary to the intent of Congress.

Congress did not intend to allow an inquest to be held as to the kind of work that a registrant did or was willing to do. Congress intended to protect every person who had conscientious objections based upon religious grounds to direct participation in war in any form. Congress did not make the factors relied upon by the trial court and the local board, which were approved by the Court of Appeals, as any basis in fact for the denial of the conscientious objector claim.

Neither the act nor the regulations make work that a person does that indirecly contributes to the war effort a criterion to follow in the determination of his conscientious objections. The sole questions for determination of conscientious objection are: (1) does the person object to participation in the armed forces as a soldier? (2) does he believe in the Supreme Being? (3) does this belief carry with it obligations to God higher than those owed to the state? (4) does his belief originate from a belief in the Supreme Being and not from a political, sociological, philosophical or personal moral code?

Witmer's case commands affirmative answers to all these questions. He fits the statutory definition of a conscientious objector.

It is entirely irrelevant and immaterial for the courts below to hold that there was basis in fact because Witmer was willing to work on a farm. This was not an element to consider and in any event it was no basis in fact according to the law for the denial of his claim. It did not impeach or dispute in any way what he said in his questionnaire and conscientious objector form, all of which was corroborated by the FBI report.

The law does not authorize the Department of Justice and the courts below to invent fictitious and foreign stand-

ards and use them to speculate against evidence and facts that are undisputed.—*Dickinson* v. *United States*, 346 U. S. 389 (Nov. 30, 1953); *Schuman* v. *United States*, 9th Cir., Dec. 21, 1953, 208 F. 2d 801; *Annett* v. *United States*, 10th Cir., 1953, 205 F. 2d 689; *United States* v. *Alvies*, N. D. Cal. S. D., 112 F. Supp. 618; *United States* v. *Graham*, W. D. Ky., 109 F. Supp. 377; *United States* v. *Everngam*, D. W. Va., 102 F. Supp. 128; *Pine* v. *United States*, 4th Cir., April 5, 1954, 212 F. 2d 93; *Jessen* v. *United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —.

The question of employment and work performed by one who claims to be a conscientious objector becomes material only when the type of work willing to be done by the conscientious objector is direct participation of a combatant or noncombatant nature.

The Congress of the United States in passing the Universal Military Training and Service Act provided for two kinds of conscientious objectors. One is a person who has objections only to the performance of combatant service. He is recognized as willing to wear a uniform and do anything in the armed forces except kill or carry a gun. This type of conscientious objector does not have his conscience questioned because of the type of work he is willing to perform even though it may be in the armed forces. No board or official of the government may deny a registrant his conscientious objector claim to the I-A-O classification (limited military service as a conscientious objector opposed to combatant military service only) because of his willingness to perform noncombatant service in the armed forces, thus helping the armed services do a job of killing.

It is submitted also that the conscientious objector to both combatant and noncombatant military service ought not be denied his conscientious objector classification because of the kind of work he is doing outside the armed services that indirectly contributes to the war effort. The law disqualifies no one on such ground. A reasonable inter-

pretation of the act and the regulations would not make the type of employment that a registrant is willing to do relevant so long as it does not involve direct participation in combatant or noncombatant military service.

The tremendous importance of the question here discussed is best illustrated by a showing of how far the holding of the courts below, when given its logical extension, pushes conscientious objectors out from under the protection of the law. Should this interpretation of the statute be accepted as the law then an unreviewable engine of speculation, forfeiture and discrimination has been placed in the hands of the administrators of the law. They can forfeit the conscientious objector claim for the willingness of the conscientious objector to do anything the draft boards or the Department of Justice finds to contribute remotely to the war effort or which may be considered indirect participation. If such an interpretation be accepted then a conscientious objector who farms and produces food ultimately used by the army, or who works on a railroad that carries troops or implements of warfare, or who pays his income taxes—over half of which is used to finance the armed forces and the defense effort of the nation—will be denied his exemption from direct participation in the armed forces. Then at last a ready device for evading the holding of this Court in *Dickinson* v. *United States,* 346 U. S. 389 (Nov. 30, 1954), has been found.

There are no other opinions discussing this question (except that of the trial court in this case) known to counsel for petitioner. The question was involved (but not discussed) in *Clark* v. *United States,* 74 S. Ct. 357, 98 L. Ed. 171 Mr. Justice Douglas said: "According to the papers before me he indicated that he was by religious training and belief opposed to participation in war but that he was willing to use force in defense of his family or his congregation and that he would work in a defense plant if in great economic need." He held that a substantial question was involved upon the appeal so as to permit bail.

The strict construction of the act advocated by the Government and the court below was not intended by Congress; Congress had in mind a liberal interpretation of its provision for conscientious objectors to protect the religious objector. The records of the hearings in Congress, the reports and the act all prove a broad exemption was intended. Congress had in mind that objection to war is a part of the religious history of this country. Conscientious objection was recognized by Massachusetts in 1661, by Rhode Island in 1673 and by Pennsylvania in 1757. It became part of the laws of the colonies and states throughout American history. It finally became part of the national fabric during the Civil War and has grown in breadth and meaning ever since. (See Selective Service System, *Conscientious Objection,* Special Monograph No. 11, Vol. I, pp. 29-66, Washington, Government Printing Office, 1950.) So strongly was the principle of conscientious objection imbedded in American principles that President Lincoln and his Secretary of War thought that conscientious objectors had to be recognized. This is impressed upon us by Special Monograph No. 11, Vol. I, *supra,* at page 43: "At the end of hostilities Secretary of War Stanton said that President Lincoln and he had 'felt that unless we recognize conscientious religious scruples, we could not expect the blessing of Heaven.'"

As appears above, the Selective Service System in Special Monograph No. 11, Vol. I, carries the history far back, even before the American Revolution (*Ibid.,* pages 29-35) Virginia and Maryland exempted the Quakers from service. (*Ibid.,* page 37) From the Revolution to the Civil War provision for exemption of conscientious objectors appears in the state constitutions. During the Civil War the military provost marshal was authorized to grant special benefits to noncombatants under Section 17 of the act, approved February 24, 1864. Lincoln was urged to force conscientious objectors into the army. He replied:

"No, I will not do that. These people do not

> believe in war. People who do not believe in war make poor soldiers. . . . These people are largely a rural people, sturdy and honest. They are excellent farmers. *The country needs good farmers fully as much as it needs good soldiers. We will leave them on their farms where they are at home and where they will make their contributions better than they would with a gun."—Ibid.*, pages 42-43, italics added.

Congress certainly must have had in mind the historic national policy of fair treatment to conscientious objectors. The well-known governmental sympathy toward the Quakers and others was not ignored by Congress when the act was passed. Congress must have had in mind the historic considerations enumerated by the Supreme Court in *Girouard* v. *United States*, 328 U. S. 61. Read 328 U. S., at pp. 68-69.

The recommendation of the Department of Justice is advisory and may be rejected by the appeal board. This does not mean that illegal recommendations are harmless. When the recommendation is not rejected but the advice is followed then it becomes a link in the chain of administrative proceedings. A break in this link of the chain destroys the proceedings.—*United States* v. *Everngam*, D. W. Va. 1951, 102 F. Supp. 128; *United States* v. *Bouziden*, W. D. Okla., 1952, 108 F. Supp. 395.

The adoption and following of erroneous advice from the Department of Justice by the appeal board makes invalid the final classification. *Annett* v. *United States*, 10th Cir., 1953, 205 F. 2d 689; *Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jessen* v. *United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —. It cannot be argued, therefore, that the illegal recommendation did no harm. It has been held that where there is an illegal recommendation by the Department of Justice and the evidence shows that the

registrant is a conscientious objector it must be concluded that the only reason for a denial of the conscientious objector claim is the illegal recommendation which makes the classification illegal.—*United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —.

It is submitted that there is presented here an important and substantial question of law that has not been decided by this Court but which ought to be determined by this Court. This is a sufficient ground for granting certiorari.

II.

The undisputed documentary evidence in the file before the appeal board showed that the petitioner was conscientiously opposed to participation in combatant and noncombatant military service. He showed: (1) he believed in the Supreme Being, (2) he was opposed to participation in combatant and noncombatant military service, (3) he based his belief and opposition to service on religious training and belief as one of Jehovah's Witnesses, (4) such stand did not spring from political, sociological or philosophical beliefs. This showing brought him squarely within the statute and the regulation providing for classification as a conscientious objector. This entitled him to exemption from combatant and noncombatant military training and service.

It has been held by many courts of appeal that the rule laid down in *Dickinson* v. *United States*, 346 U. S. 389, holding that if there is no contradiction of the documentary evidence showing exemption as a minister that there is no basis in fact for the classification also applies in cases involving claims for classification as conscientious objectors. —*Weaver* v. *United States*, 8th Cir., Feb. 19, 1954, 210 F. 2d 815; *Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *United States* v. *Hartman*, 2d Cir., Jan. 8, 1954, 209 F. 2d 366; *Pine* v. *United States*, 4th Cir., April 5, 1954, 212 F. 2d 93; *Jewell* v. *United States*, 6th Cir., Dec. 22, 1953, 208 F. 2d 770; *Schuman* v. *United States*, 9th Cir., Dec. 21, 1953,

208 F. 2d 801; *Jessen* v. *United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —.

Recently in *Jessen* v. *United States*, 10th Cir., May 7, 1954, — F. 2d —, after quoting from *Dickinson* v. *United States*, 346 U. S. 389, the court said:

> "Here, the uncontroverted evidence supported the registrant's claim that he was opposed to participation in war in any form. There was a complete absence of any impeaching or contradictory evidence. It follows that the classification made by the State Appeal Board was a nullity and that Jessen violated no law in refusing to submit to induction."

The decision of the court below is in direct conflict with the holdings in other cases decided by other courts of appeal. In those cases the appellants, like petitioner here, were Jehovah's Witnesses. They showed the same religious belief, the same objection to service and the same religious training. While different speculations were relied upon by the Government which were discussed and rejected by the courts in those cases, the courts were also called upon to say, on facts identical to the facts in this case, whether there was basis in fact. For instance, see *Jessen* where the Tenth Circuit (after following *Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329) said: "The remaining question is whether there was any basis in fact for the classification made by the State Appeal Board."

The holdings of other circuits with which the holding of the court below (that there was basis in fact for the denial of the classification) directly conflicts are: *Annett* v. *United States*, 10th Cir., June 26, 1953, 205 F. 2d 689; *United States* v. *Pekarski*, 2d Cir., Oct. 23, 1953, 207 F. 2d 930; *Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jewell* v. *United States*, 6th Cir., Dec. 22, 1953, 208 F. 2d 770; *Schuman* v. *United States*, 9th Cir., Dec. 21, 1953, 208 F. 2d

801; *United States* v. *Hartman*, 2d Cir., Jan. 8, 1954, 209 F. 2d 366; *Pine* v. *United States*, 4th Cir., April 5, 1954, 212 F. 2d 93; *Jessen* v. *United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —. And these cases ought not to be pushed aside on the specious but factitious ground that, because the courts in some of those cases discussed the speculations urged on the courts as basis in fact, the cases are different. They are not different because on the question of whether or not there was basis in fact the evidence in each case is identical to the facts in this case and the holdings were the opposite to that made by the court below in this case. Such attempted distinction would be a distinction without a difference. The cases above cited are identical to the facts in this case insofar as the statements in the draft board record showing conscientious objection is concerned.

It is submitted, therefore, that there is a direct conflict between the holding of the court below and the holding of other courts of appeals on this question. This gives a basis for granting the writ of certiorari.

III.

The decision in this case by the court below conflicts with its earlier decision in *United States* v. *Stiles*, 3rd Cir., 1948, 169 F. 2d 455. The single narrow question involved in the *Stiles* decision was "whether under Selective Service Regulations a local board is required to classify a registrant anew after his personal appearance before the board even though he presents no new information to the board when he appears before it." This language is taken from the *Stiles* opinion. The court went on to hold that "the furnishing of new information" is not made "a condition precedent to such classification anew and it thus appears that it is to be done after reconsideration of the information already in the file in the light of the registrant's oral discussion of it and of his claim for reclassification even though he has furnished no new information."

The entire court below in its opinion ignores completely the importance of the maintenance of procedural due process of law in Selective Service cases. It should be remembered that the scope of review in Selective Service cases as far as the classification is concerned is limited and restricted. (*Estep* v. *United States*, 327 U. S. 114) The rule of administrative law is that in cases where the review is restricted there must be a strict compliance with the requirements of procedural due process by the administrative agency.—See *N. L. R. B.* v. *Cherry Cotton Mills*, 5th Cir., 1938, 98 F. 2d 444, 446.

It has been uniformly held that for the final order to report for induction to be valid in Selective Service cases it must appear that the local board has strictly complied with the procedural requirements of due process of law. —*Ver Menren* v. *Sirmyer*, 8th Cir., 36 F. 2d 876, 881; *United States* v. *Zieber*, 3rd Cir., 161 F. 2d 90, 92; Ex parte *Fabiani*, E. D. Pa. 105 F. Supp. 139; *United States* v. *Graham*, N. D. N. Y., 108 F. Supp. 794; *Bejelis* v. *United States*, 6th Cir., 206 F. 2d 354.

In *United States* v. *Hufford*, M. D. Pa., 103 F. Supp. 859, 861 the district court below said:

> "If the board did not fully and fairly comply with the provisions of the Act and the applicable regulations, the registrant was under no duty to comply with the order."

The effort on the part of the court below to simulate this case to *Martin* v. *United States*, 4th Cir., 190 F. 2d 775, and to distinguish it from the holding in *United States* v. *Stiles*, 3rd Cir., 169 F. 2d 455, proceeds on a fundamentally erroneous basis.

The entire basis of the decision below can be briefly stated. It is: Witmer had notice of what took place upon the occasion of the personal appearance. Because he had actual notice of the proceedings there was a waiver of the

violations of the law by the local board and Witmer cannot now complain about these violations.

The undisputed evidence shows that the local board defiantly refused to reopen the case and consider it entirely anew. The local board merely stated that the new evidence did not show Witmer was entitled to the ministerial exemption. The board then refused to reopen, declaring that the original classification stood. This was not a *de novo* consideration of the case. Admittedly is no evidence in the record that the case was reopened as required by section 1624.2(b) and (c) of the regulations. The record shows to the contrary. The court held that because the board considered the IV-D claim there was a *de novo* consideration. Nowhere in the record does it appear that the local board reopened the entire case. Nowhere does it appear that on the personal appearance the local board considered the conscientious objector form. Nowhere in the record does it appear that the local board considered the farmer's classification. The only claim that was mentioned was the minister's claim, but even then the very memorandum in which it is mentioned shows that the board did not reopen the old classification, as it was required to do. It merely ordered the old original classification to stand without any reclassification as required by Section 1624.2(c) of the regulations.

It is obvious that the local board defiantly violated Section 1624.2(c), refused to conduct a *de novo* hearing upon the personal appearance and refused to consider all the claims for classification and reclassify Witmer "in the same manner as if he had never before been classified" as required by Section 1624.2(c).

The court below merely held that because Witmer was given actual notice of this procedural violation of his rights by the local board, this was equivalent to the legal notice of legal procedure required by Section 1624.2(c). Actual notice of the illegal refusal to reopen the case and reclassify Witmer was not notice of reclassification on personal ap-

pearance required by Section 1624.2(d). That section of the regulations says that the board shall mail the registrant notice of classification. Since there was no reclassification upon personal appearance the giving of actual notice of the determination of the local board not to reopen cannot be argued or found to be "Notice of Classification" required by Section 1624.2(d).

In order for the notice of action by the local board to be good and legal, the action taken by the local board upon personal appearance must be legal action itself. There must be a reopening of the classification and a reclassification after a reopening, the same as though the registrant "had never before been classified," as required by Section 1624.2-(c) of the regulations. Illegal action and notice of such illegal action are not equivalent to the legal action required by the regulations and notice of such action.

Actual notice, even though not in writing, of proper legal action makes harmless the failure to give written notice required by the regulations. (*Martin* v. *United States,* 4th Cir., 190 F. 2d 775) But where there is illegal action the actual notice thereof does not make the illegal action legal or validate the invalid proceedings.

If the holding of the court below is to be accepted, then it will be the end of procedural due process of law. A tribunal could deny procedural due process upon a hearing and then notify a party of such illegal denial. According to the court below the giving of actual notice of such denial of procedural due process constitutes a waiver of it. This extreme position taken by the court below the law of the land rejects. The position of the court below in this case is subversive of the maintenance of due process of law and standards of strict compliance with the procedural requirements of law.

The court below relies upon *Martin* v. *United States,* 4th Cir., 190 F. 2d 775, and *Atkins* v. *United States,* 10th Cir., 204 F. 2d 269. As has been demonstrated in the main brief the facts in both of those cases show an entirely dif-

ferent situation from the facts that exist in this case on the personal appearance. In both of those cases the only claim made by the registrant was the ministerial claim. No conscientious objector claim was made. There was no other claim for classification made. When the boards considered only the ministerial claim in the *Martin* and *Atkins* cases they considered the entire case. Here, however, there was more involved in the case than the ministerial claim. It was the duty and responsibility of the board to pass upon the conscientious objector claim and the farmer claim. Neither of these claims was passed upon or considered. Moreover the *Martin* and *Atkins* cases are distinguishable for other reasons. It appears from the opinions of the courts in both of those decisions that each local board did actually reopen the case and reconsider the classification entirely anew. Martin was actually reclassified on the personal appearance and placed in Class 1-A. Atkins, while not reclassified, was notified that his claim for exemption as a minister had been denied and that the old classification would be continued. Therefore there was an actual reopening of the cases by the local boards. But such was not done in this case. Therefore the doctrine of *United States* v. *Stiles,* 3rd Cir., 169 F. 2d 455, applies here and should be enforced rather than the rule of *Martin* v. *United States,* 4th Cir., 190 F. 2d 775.

The conduct of the local board here is more reprehensible than that of the local board that was condemned in *United States* v. *Strebel,* D. Kans., 103 F. Supp. 628. There on personal appearance of the registrant the local board reopened the classification but merely determined upon the personal appearance that they would let the old classification drift along. Even this type of action upon the personal appearance was condemned. Here the misconduct of the local board is the same as that condemned in *United States* v. *Graham,* N. D. N. Y., 108 F. Supp. 794.

The Government makes an extensive argument that Witmer waived his rights to complain about the denial of a full and fair hearing upon the personal appearance and

the failure of the local board to follow the regulations. It is argued that the hearing that was conducted by the Department of Justice upon the conscientious objector claim completely satisfied the requirements of due process of law. This argument has been fully rejected by this Court in *United States* v. *Zieber,* 161 F. 2d 90, 92.—See also *United States* v. *Fry,* 2d Cir., 203 F. 2d 638; *United States* v. *Romano,* S. D. N. Y., 103 F. Supp. 597; *United States* v. *Laier,* N. D. Cal. S. D., 52 F. Supp. 392.

The regulation relied upon by the petitioner that requires a *de novo* consideration and a reopening of the case was repealed on September 25, 1951. This was after the hearing on personal appearance in this case. See Executive Order No. 10292. This is not, however, any reason for not granting the writ of certiorari. This Court has granted certiorari even where the law has, as here, been changed and it was clear that the issue would not arise again. —*Helvering* v. *New York Trust Co.,* 292 U. S. 455; *Cohn* v. *United States,* 297 U. S. 691.

It is submitted, therefore, that the question is of such great importance that the writ of certiorari should be granted so that it can be finally determined by this Court.

CONCLUSION

For the reasons above stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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June, 1954.

APPENDIX

United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 11,189

UNITED STATES OF AMERICA

v.

WILLARD ROGER HAGAMAN,

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Argued February 2, 1954
Reargued March 19, 1954

Before BIGGS, *Chief Judge*, and MARIS, GOODRICH, MCLAUGHLIN, KALODNER, STALEY and HASTIE, *Circuit Judges*.

OPINION OF THE COURT

(Filed May 13, 1954)

By HASTIE, *Circuit Judge*.

This is an appeal from a conviction for failing and refusing to be inducted into the armed forces of the United

States after being ordered to do so.[1] There is no doubt that the appellant, Hagaman, refused to be inducted into the armed forces. The defense to the criminal prosecution is that he was not obliged to obey the order to report and be inducted because the order was predicated upon Selective Service classification so improper that a court, acting within judicial province as defined in *Estep* v. *United States*, 1946, 327 U. S. 114, should declare it invalid.

Hagaman makes three distinct contentions: first, that the local board failed to follow prescribed procedure; second, that his claim to deferment as a minister of religion was rejected arbitrarily; and third, that the National Appeal Board had no basis for action it took changing his 1-O classification to 1-A.

All of us agree that the first and second contentions are without merit. The reasons for that conclusion appear in the opinion of Judge Goodrich. However, it is the decision of the court that appellant's third contention is sound and, therefore, that the conviction cannot be sustained.

This is the reasoning on the decisive third point which seems sound to a majority of the court. The registrant, claiming to be both a minister of religion and a conscientious objector, appealed to his district board from his local board's order placing him in class 1-A. On that appeal, in accordance with established procedure, the file was referred to the Department of Justice for advisory opinion. Honorable Curtis Bok, sitting as hearing officer for the Eastern District of Pennsylvania, then heard the registrant and filed his report and recommendation expressing his strong and complete conviction that the young man was sincere and was entitled at least to a conscientious objector classification. The Department of Justice so recommended and

[1] "[A]ny person who . . . evades or refuses registration or service in the armed forces . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ." 50 U. S. C. A. App. § 462(a).

the five member district board by unanimous vote so decided, classifying the registrant 1-O.

Thereafter, the registrant, still believing that he was entitled to the additional exemption of a minister, caused the Director of Selective Service to appeal the 1-O conscientious objector classification, thus placing the whole matter before the National Appeal Board for reconsideration. That board, by a two to one vote, without stating any reason, and apparently without any additional evidence, not only denied the ministerial classification but revoked the conscientious objector classification and placed the registrant in class 1-A.

Thus, the present attack upon registrant's classification does not raise the question whether the local board had any justification for the initial 1-A classification,—and we do not suggest that it did—but rather whether the national board had any allowable basis for replacing the 1-O classification put into effect by the district board with its own 1-A classification. This distinction is important because the national board, very much like the court in this proceeding, seems merely to have reviewed the record made below, while the district board had made its 1-O classification on the basis of new matter, a report of a *de novo* hearing before an examiner and the resulting recommendation of the Department of Justice,[2] in addition to the local board file.

Upon what did he national board predicate its decision? We can look at the record and see what the considerations must have been for and against the claim of ministerial exemption. But the record does not disclose what it was that moved the national board to change the 1-O classification to 1-A. There certainly was very obvious basis in the record for the district board's action in classifying registrant as a conscientious objector. We are left

[2] A regulation requires the Board to "consider" the report and recommendation of the Department of Justice. 32 C. F. R. § 1626.25(c).

to speculate why the national board refused to accept that showing.

The Court of Appeals for the Sixth Circuit disposed of a record very much like this one by saying merely that, since there was no evidence contradicting the registrant's claim or inconsistent with his actual classification as a conscientious objector, and the national board acted merely on the file without taking testimony, the reclassification from 1-O to 1-A "was arbitrary and capricious, and without basis in fact." *Jewell* v. *United States*, 6 Cir. 1953, 208 F. 2d 770; *cf. United States* v. *Alvies*, N. D. Cal. 1953, 112 F. Supp. 618. Even more recently the Court of Appeals for the Fourth Circuit has disposed of such a record by saying "An examination of the file shows that there is nothing therein contradictory of the facts stated in the . . . [report and] recommendation [of the Department of Justice] and nothing upon which appellant could be denied his claim of exemption as a conscientious objector. The order giving him the classification 1-A, having no support in the record, is therefore void." *Pine* v. *United States*, No. 6720, decided April 5, 1954. In a somewhat similar situation the Court of Appeals for the Second Circuit reversed a denial of habeas corpus and remanded the case to the district court to determine as a fact the basis upon which the conscientious objection claim had been rejected. *United States* ex rel. *Reel* v. *Badt*, 2 Cir. 1944, 141 F. 2d 845.

In the case last cited the court indicated that such agencies as these boards should make their processes "sufficiently explicit to reveal so far as may be reasonably practicable, whether or not they are keeping within the statute under which they purport to act". 141 F. 2d at 848. Of course such disclosure need not be technical or elaborate. And it is not necessary at all in the usual case where the issue in controversy and the basis of decision are made apparent by the record itself. But in cases like the one now before us, the reclassifying board should indicate in a general and non-technical way it changed the classification.

However, we are reluctant to reverse on this procedural deficiency, if there is any satisfactory way of reaching the merits of the case. For that reason we have searched the record for possible bases of reclassification, though none has been made explicit or even inferentially clear. We find just two possibilities. The board may have thought that as a matter of law the showing made did not meet the statutory requirements for classification as a conscientious objector.[3] Or it may have disbelieved the registrant's testimony as to his convictions about participation in war.

We are inclined to believe that the national board proceeded on the first ground, taking the position that as a matter of law Jehovah's Witnesses are not conscientious objectors. This impression is based in large part upon the fact that in recent months Courts of Appeal have had to consider a whole series of rather similar cases where unexplained orders of the national board changing the classification of Jehovah's Witnesses from 1-O to 1-A make sense only if they represent a consistent administrative application of this understandable, if mistaken, legal theory. *Pine* v. *United States*, 4 Cir. 1954, *supra; Jewell* v. *United States*, 6 Cir. 1953, *supra; United States* v. *Hartman*, 2 Cir. 1954, 209 F. 2d 366; *cf. Taffs* v. *United States*, 8 Cir. 1953, 208 F. 2d 329, *cert. den.* 1954, 347 U. S. 928. Indeed, the government urged this legal point in its brief on the present appeal. It was pointed out that the registrant as one of Jehovah's Witnesses predicates his opposition to war on the tenets of the Watchtower Bible and Tract Society. Admittedly, that religious organization disapproves international war but sanctions "theocratic war". Hence, it was contended that Jehovah's Witnesses are not taught opposition "to participation in war in any form." But on oral argument in this case that contention was abandoned in the

[3] Section 6(j) of the Universal Military Training and Service Act exempts from combatant training and service a registrant "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 50 U. S. C. App. § 456(j).

light of impressive decisions against the government on the very point since Hagaman's conviction. *Taffs* v. *United States, supra; United States* v. *Hartman, supra.* Thus, it is now conceded that the national board was wrong if it reclassified the registrant on the theory that his professed creed would not sustain a claim of conscientious objection to war.

But what if, apart from this legal question, the national board did not believe the registrant was sincere in his professions? Was the national board entitled, on the paper record alone, thus to discredit and reject the registrant's proof which had been so convincing to the hearing officer and the district board? *Jewell* v. *United States, supra,* and *Pine* v. *United States, supra,* both strike down such action as arbitrary. But here the government argues that such disbelief of the registrant might properly have been based on the fact that this young man, one of whose parents was a Jehovah's Witness, had not himself embraced that faith until he was seventeen years old at a time just three months before he registered for Selective Service. However, such rejection of testimony would have reflected the antithesis of the normal and proper unwillingness of a reviewing agency, which has not heard a witness, to reverse a judgment as to his credibility. Beyond that, it is a striking example of the very type of refusal to credit the evidence on the basis of suspicion and speculation, no conflict appearing on the face of the record, which the Supreme Court disapproved very recently in *Dickinson* v. *United States,* 1953, 346 U. S. 389. It does not matter whether we accept the statement of the majority in the *Dickinson* case, that ". . . the courts may properly insist that there be some proof that is incompatible with the registrant's proof of exemption", or the complaint of the dissenters, that "Under today's decision, it is not sufficient that the board disbelieve the registrant. The board must find and record affirmative evidence that he has misrepresented his case . . ." 346 U. S. at 396, 399. Under either formulation we would have

to assume that the national board here did just what the Supreme Court disapproved, and, different from the *Dickinson* case, in the face of the strong contrary conviction of the district board as well as the hearing officer before whom the registrant had appeared. In these circumstances, the classification cannot stand on the possibility that the national board was unwilling to credit the registrant's testimony as to conscientious objection to participation in war.

In *United States* ex rel. *Reel* v. *Badt, supra,* the Court of Appeals for the Second Circuit sent the case back to the district court for a further hearing because on the record it could only speculate whether the classification was made on a lawful or an unlawful basis. Here, we are satisfied that neither of the possible bases was proper. The 1-O classification was changed to 1-A either on a theory which the government now concedes to be legally wrong, or by an arbitrary decision on the facts. The reclassification was invalid and induction could not lawfully be required.

The judgment will be reversed.

GOODRICH, *Circuit Judge,* dissenting in part.

While this opinion is termed a dissent, the first two points discussed represent the opinion of all the members of the Court. They are: (1) Procedural due process; (2) The refusal to classify Hagaman as a minister of religion. The dissent by the minority comes upon the conscientious objector point discussed in Judge Hastie's opinion, which is joined in by enough of his colleagues to constitute a majority of the Court.

We turn to the procedural point first. Hagaman says he was denied procedural due process. After the filing of his questionnaire he received from his local Board a classification of 1-A. He requested a personal interview, to which

he was entitled under the regulations.[1] He had a personal interview. The Board heard him fully. Then he was told orally that his classification would not be changed and that he could appeal.[2] He did appeal; in fact his appeal went to the highest administrative authority, the National Selective Service Appeal Board.

The basis for Hagaman's complaint is that the local Board did not formally "reclassify" him after the personal interview as the regulations require. It is true that the regulations at the time of the events here did provide both for a formal reclassification and notification by mail.[3] It is also true that courts of appeals have reversed convictions of registrants when their rights were prejudiced by failure of notification. *United States* v. *Stiles*, 169 F. 2d 455 (C. A. 3, 1948), explaining *United States* v. *Zieber*, 161 F. 2d 90 (C. A. 3, 1947); *United States* v. *Fry*, 203 F. 2d 638 (C. A. 2, 1953).

It is one thing, however, to protect a man when he is prejudiced by the failure of administrative authorities to observe the precautions taken to guard his rights. It is an-

[1] "*Opportunity to appear in person.* (a) Every registrant, after his classification is determined by the local board . . . shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (SSS Form No. 110) to him." 32 Code Fed. Regs. § 1624.1 (1949). Substantially the same provision appears in the present regulation, 32 Code Fed. Regs. § 1624.1(a) (1951).

[2] The Board's minutes state: "Registrant told he would remain 1-A and case not reopened." On the same day as this hearing, the Board for the second time sent Hagaman a Notice of Classification as 1-A.

[3] "(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified.

"(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on Notice of Classification (SSS Form No. 110) to the registrant and on Classification Advice (SSS Form No. 111) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 1623.4 of this chapter." 32 Code Fed. Regs. § 1624.2 (1949).

other thing to create an administrative procedure, designed to be handled by volunteer laymen in communities throughout the nation, as technical and ritualistic as common law pleadings. We have said in an earlier opinion that a registrant is not obliged to make his points with his draft board in the fashion required of a well-trained lawyer, *United States* ex rel. *Berman* v. *Craig*, 207 F. 2d 888 (C. A. 3, 1953). It is likewise true that the board's proceedings do not need to be recorded with the meticulous accuracy with which an experienced corporation counsel draws a set of corporate minutes.

The present case is like *Martin* v. *United States*, 190 F. 2d 775 (C. A. 4, 1951), followed in *Atkins* v. *United States*, 204 F. 2d 269 (C. A. 10, 1953) in which the court refused to "quibble over terminology."

The course of decision on this matter has been a commendable one. If a registrant has been denied a chance to exercise rights given him under the statute and regulations his conviction has been reversed, as in the *Zieber*, *Stiles*, and *Fry* cases, cited above. On the other hand, as in the *Martin* and *Atkins* cases, where there has been substantial compliance, so that a man has had all the consideration due him, the courts have refused to reverse for mere technical irregularities. That, we believe, works substantial justice.[4]

We pass, therefore, to appellant's complaint that there is no support in the record for the classification given him. Since *Estep* v. *United States*, 327 U. S. 114 (1946), we are bound to make this inquiry, and if there is no basis in fact

[4] Under the present regulations, the board need not reclassify the registrant in the absence of new information justifying such a change. "(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and, if the local baord determines that such new information justifies a change in the registrant's classification, the local board shall reopen and classify the registrant anew. If the local board determines that such new information does not justify a change in the registrant's classification, it shall not reopen the registrant's classification." 32 Code Fed. Regs. § 1624.2 (1951). However, the notification requirement remains the same. See 32 Code Fed. Regs. § 1624.2(d).

for the classification we must reverse the conviction. *Dickinson* v. *United States*, 346 U. S. 389 (1953); *Annett* v. *United States*, 205 F. 2d 689 (C. A. 10, 1953); *United States* v. *Pekarski*, 207 F. 2d 930 (C. A. 2, 1953); *Taffs* v. *United States*, 208 F. 2d 329 (C. A. 8, 1953), cert. denied, 347 U. S. 928 (1954); *Schuman* v. *United States*, 208 F. 2d 801 (C. A. 9, 1953); *Jewell* v. *United States*, 208 F. 2d 770 (C. A. 6, 1953); *United States* v. *Hartman*, 209 F. 2d 366 (C. A. 2, 1954); *United States* v. *Kobil* (E. D. Mich. 1951) (unreported); Ex parte *Fabiani*, 105 F. Supp. 139 (E. D. Pa. 1952); *United States* v. *Graham*, 109 F. Supp. 377 (W. D. Ky. 1952); *United States* v. *Alvies*, 112 F. Supp. 618 (N. D. Cal. 1953); *United States* v. *Loupe* (D. N. J. 1953) (unreported); *United States* v. *Burnett*, 115 F. Supp. 141 (W. D. Mo. 1953); *United States* v. *Lowman*, 117 F. Supp. 595 (W. D. N. Y. 1954); *United States* v. *Benzing*, 117 F. Supp. 598 (W. D. N. Y. 1954).

We start then with the task "to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities." *Dickinson* v. *United States*, *supra*, at 396.

We consider first the matter of Hagaman's claim to be classified as a minister of religion and, therefore, exempt from the draft under 50 U. S. C. A. App. § 456(g). It is settled that merely because he belongs to the body known as Jehovah's Witnesses, all of whose members claim to be ministers to preach the gospel to all the nations, he does not thereby become entitled to the ministerial exemption under the statute and regulations. *Dickinson* v. *United States*, *supra*, at 394; *Cox* v. *United States*, 332 U. S. 442, 449-450 (1947). The ministerial exemption is a narrow one and

has been rather fully described in the statute.[5] The burden is on the registrant to show that he comes within it. *Dickinson* v. *United States*, *supra*, at 395.

The administrative authorities were justified in finding that Hagaman did not so qualify. It is true that he was baptized at the age of eighteen into the "ministry" of this sect. And he claims to have been a minister from June, 1948, when he joined Jehovah's Witnesses. Of course, this is simply the claim all members make and, as said above, we must go further to find that he was a minister in the statutory sense. If, as pointed out in the *Dickinson* case, the flock is not to be left without a shepherd, it is equally true that the flock cannot consist of shepherds only.

When Hagaman was asked in the special form for conscientious objectors to name "the pastor or leader of such church, congregation, or meeting" he answered that it was one P. L. Talarico, who was the "company servant" for

[5] "(1) The term 'duly ordained minister of religion' means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

"(2) The term 'regular minister of religion' means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

"(3) The term 'regular or duly ordained minister of religion' does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization." 50 U. S. C. A. App. § 466(g).

this particular group in Fort Lauderdale, Florida.[6] Hagaman shows some evidence of preaching activities, but those instances are only seven in number at most.[7] It is true that Mr. Talarico, the company servant in Fort Lauderdale, wrote a letter in which he said he considered Hagaman "a regular minister of religion." He followed that statement by saying he "would not hesitate to assign him any of the duties regularly and customarily performed by an ordained minister," such as "conducting Bible studies, baptismal services, funeral discourses, marriage ceremonies," and so on. But "not hesitate to assign" is not the same as being assigned and carrying on these duties. There is evidence, undoubtedly, that Hagaman did engage in some religious activity, which he, himself, described as similar to that done by deacons in other denominations.[8] Everybody knows that a great deal of church work in every demomination is done by persons who devote themselves without compensation to the task. We know, too, that in many denominations laymen frequently make religious talks without thereby achieving in their own or anyone's mind any "ministerial status."

This case presents a problem of deciding on which side of the line Hagaman's activities fell. There were some things to indicate employment in a ministerial capacity. There were others to indicate that he had not reached in

[6] In the *Dickinson* case, supra, defendant was the "company servant" for Coalinga, California, and proved extensive preaching activities. We do not mean to indicate that only those Witnesses who are "company servants" can be exempted as ministers. See *Cox* v. *United States*, *supra*, at 449-450.

[7] In connection with one of those instances, there is an unexplained inconsistency, the significance of which we are perhaps not required to pass on. In the Board's file, which is in evidence, there is a photostat of a letter, dated May 2, 1951, from a man named Bruce E. Giffin in which he asked Hagaman to take his place in giving a discourse on Sunday, May 27, 1951. A circular announcement of the discourse accompanies the letter. But the postmark upon the photostat of the envelope attached thereto bears date June 3. The claim for deferred classification had been made in March, 1951.

[8] Hagaman was admitted several weeks before he filled out his questionnaire to the group called "pioneers." Pioneers, as we understand it, are not "company servants" but are a step up in ranks of the hierarchy from ordinary members. They are obliged to perform 100 hours a month in the group service. Hagaman's comparison to the work done by the deacons in other denominations seems to us quite apt.

the service of Jehovah's Witnesses the place where he could be called a "minister" in the sense in which that term is used by the United States, however it may be used by Jehovah's Witnesses. That being the case, the decision is for the administrative authorities. *Estep* v. *United States, supra,* at 122.

We now come to the point on which the Court divides. We do not disagree with the majority here and the judges in other circuits who have refused to reject all Jehovah's Witnesses from the conscientious objector category because of the "theocratic warfare" point. But we do not see any basis for assuming that Hagaman's classification as a conscientious objector was made because of Jehovah's Witnesses' adherence to the doctrine of "theocratic warfare," whatever that may mean.

The conscientious objector claim, it may be agreed, is the most difficult point in the case. If, as the majority in the *Dickinson* case says, the draft boards are now to be obliged to build a record, we still have the question of how much of a record it is going to take to support their conclusions. Decisions have said that mere suspicion is not enough, *Dickinson* v. *United States, supra,* at 397; *Schuman* v. *United States,* 208 F. 2d 801 (C. A. 9, 1953). On the other hand we do not suppose that the courts are going to require draft boards to go out and make investigations in the community and bring into their hearings witnesses to oppose claims for classification made by registrants. If they must do so, the administration of selective service laws will become a much more highly complicated process than it now is.

The question in this case, we think, should turn upon the administrative body's conclusion as to the sincerity of Hagaman's claim to be a conscientious objector. He did not have the same family background of membership in Jehovah's Witnesses that many others have had whose claims for conscientious objector classifications have come

into litigation.[9] One parent was a Jehovah's Witness; the other was a Lutheran. The parents did not live together. The boy spent part of his time with each. When he was sixteen he entered the John B. Stetson University in Deland, Florida, a Baptist institution. In the document filled out at the time of his registration there in 1946 he gave his religious preference as Lutheran. He had two years of a Business Administration course at Stetson. He registered for the draft in September, 1948. He had joined Jehovah's Witnesses just three months before that.

People do change their religious views, of course, and there is no disposition on our part to deny the sincerity of a Road to Damascus conversion. On the other hand when such conversion comes a very short time before one may become liable for military service, the question is suggested whether the conversion is a real or pretended one. That, obviously, is a question of fact. The question of fact was passed upon by the local Board in the first instance unfavorably to the registrant. That body not only had the registrant's papers before it, but also had the benefit of hearing and seeing him in a personal interview. The hearing officer on appeal believed in Hagaman's sincerity after seeing him and that appeal sustained the conscientious objector classification though denying the ministerial exemption. The final appeal restored the 1-A classification which the local Board had given.

When trial courts pass upon a question of fact, courts of appeals are to accept their conclusions unless clearly erroneous. When the question of fact is whether a given witness or litigant is telling the truth, it takes a very strong set of circumstances to prevail against the conclusion reached by the fact finder. Surely our supervision over the fact finders in the selective service process is not greater than that over trial courts. Legal questions, of course, we decide as we have in the first part of this opinion. And

[9] As for instance in *Pine* v. *United States*, cited in the majority opinion.

ultimate conclusions from evidentiary facts we can also pass upon to some extent. That is what we think the Supreme Court did in the *Dickinson* case, which dealt with the fact material out of which the claim for ministerial exemption arose. That is what we have done in the portion of this opinion dealing with the claim for exemption as minister. But when the question turns on a man's motives, review of the factual determination is a different thing. Two of the three bodies who have had Hagaman's case before them have ruled against his contention. We believe the factual conclusion should stand.

A suggestion from judicial sources that boards of appeals file reasons for conclusions is one which would make judicial review easier of course. "Opinions are required in our legal system in order that the reasoning which justifies a conclusion may be made manifest." Frankfurter, J., dissenting in *Darr* v. *Burford*, 339 U. S. 200, 225 (1950). But the Congress, in setting up draft boards and the various boards of appeals, did not require findings of fact, conclusions of law or opinions. We do not think that judges are authorized to impose such a requirement.

All of us think that the judgment of the district court should be affirmed on the first two points stated above. But the majority overrules us on the point of the conscientious objector classification.

Judges McLaughlin and Staley join in the dissenting portion of this opinion.